IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 34296 of 2005(G)

OS.22/2003 of MUNSIFF COURT, MAVELIKKARA

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PETITIONER:

K.SUKUMARAN, AGED 58 YEARS,
S/O.KUNJUKUNJU, SHEEAJALAYAM, FROM PUTHENPURACKAL
VADAKKETHIL, ERUMAKUZHI MURI, PALAMEL VILLAGE.

BY ADV. SRI.RINNY STEPHEN CHAMPARAMBIL

RESPONDENTS:

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1. NAINARU MUHAMMAD SHAKE HUSSAIN RAWTHER,
AGED 70 YEARS, CHERUVELI PURAYIDATHIL,
AKTHIKATTUKULANGARA MURI, PALAMEL VILLAGE.

2. MEERA MOIDI RAWTHER ABDULKHADER RAWTHER,
AGED 67 YEARS, SHOWRAYYATHU THEKKETHIL,
AHTIKATTUKULANGARA MURI, PALAMEL VILLAGE.

BY ADV. SRI.G.GOPAKUMAR (CHERTHALA)
SRI.RASHEED C.NOORANAD
SRI.P.JACOB VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 A true copy of the plaint in O.S. 22/03

Ext.P2 A true copy of sale certificate dated 15.7.72.

Ext.P3 A true copy7 of delivery kaicheet dated 4.8.73.

Ext.P4 A true copy of the tax receipt dated 1.9.1976.

Ext.P5 A true copy of the resurvey plan of file No.259/15

Ext.P6 A true copy of tax receipt dated 13.1.03.

Ext.P7 A true copy of the order in A.A. 97/81 dated 5.7.85.

Ext.P8 A true copy of the order in O.A.53/98 dated 14.11.02.

Ext.P9 A true copy of the order in A.A.2/03 dated 31.3.04.

Ext.P10 A true copy of I.A. 1078/05 dated 8.6.05.

Ext.P11 A true copy of objection to I.A.1078/05 dated 4.7.05.

Ext.P12 A true copy of order in I.A.1078/05 dated 25.8.05.

M.N.Krishnan, J.

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W.P(C).No.34296 of 2005

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Dated this the 24th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P12 order passed by the Munsiff, Mavelikkara in I.A.No.1078 of 2005 in O.S.No.22 of 2003. The suit is one for declaration of the plaintiff's title and possession and for fixation of the northern boundary of plaint 'B' schedule property and demarcating its northern 21 cents of property surrendered by the plaintiff to the first defendant, etc.

2. The plaintiff moved an application for issuance of a Commission for the purpose of demarcating the property with respect to the boundary. The court below while considering the application for issuance of Commission observed that the principles of res judicata, question of limitation, etc . arise in the

suit. The court below opined that there will be a bar under Order 9 Rule 9 of C.P.C. to institute a new suit. These are all matters which the court may have to consider at the stage of disposal of the case after evidence.

3. It has to be stated that the court has not chosen to frame any issue so as to consider the maintainability of the suit under Order 14 Rule 2 of C.P.C. When it is so, the matter has to be proceeded in accordance with the law and trial has to be conducted, evidence has to be taken and all the disputes between the parties and all the contentions raised by the parties are to be decided by the court. In a suit for declaration of title, especially with a prayer for demarcation of the boundary, a plan of the property with respect to the title deed of the property is a must. Without that, the court cannot proceed even if it is ultimately found that the suit is maintainable on any of the grounds.

4. Therefore, the order passed by the learned Munsiff is set aside and the application for Commission is allowed and I permit both the parties to file work memo before the Commissioner with respect to their contentions. I make it clear that I am not making any observations regarding the maintainability or

otherwise of the suit and it depends upon the factual and legal matters, which are to be decided by the court below.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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